



EUROPE

Co-Hosted with:  
**Bird & Bird**

# **Hotel Insolvencies in Germany: Distress or Opportunity?**

**Wednesday 17<sup>th</sup> June 2026**

Bird & Bird

# Hotel Insolvencies in Germany: Distress or Opportunity?

Next Level Hospitality

Legal aspects of hotel insolvencies

*17 Juni 2026*

# Hotel Insolvencies - Overview

Hotel industry: Capital-intensive structures and close interconnection of **multiple contractual relationships**

→ Risk of insolvency cascade:

Insolvency of the hotel operator does not only affect the operator itself, but all parties involved: owners, financing banks, manager, franchise brands, and investors

## 2 key aspects:

- Insolvency administrator has significant powers to perform or reject existing contracts, with immediate consequences for lease, management, and/or loan agreements
- FF&E (Furniture, Fixtures & Equipment) and reserves can be contentious in insolvency proceedings, as ownership structures can be unclear or complex

# Insolvency – What does it mean?

## Grounds for Insolvency:

- **Illiquidity** – *Inability to meet mature payment obligations*
- **Over-indebtedness** – *Debtor's assets no longer cover existing obligations to pay, unless there is a highly likelihood for positive continuation for next 12 months (going concern)*
- **Threatening illiquidity** – *Likelihood of inability of debtor to meet existing payment obligations on their maturity over a forecasting period of 24 months*

## Consequences:

- Illiquidity or over-indebtedness → **Obligation** of the management to file for insolvency
- Threatening illiquidity → **Right** of the management to file for insolvency

## Types of insolvency proceedings:

- "Regular" insolvency proceedings
- Self administration proceedings
- Insolvency plan proceedings
- Out of Insolvency stabilisation and restructuring

# Insolvency – What does it mean?

## Grounds for Insolvency

- **Illiquidity** – *Inability to meet mature payment obligations*
- **Over-indebtedness** – *Debtor's assets no longer cover existing obligations to pay, unless there is a highly likelihood for positive continuation for next 12 months (going concern)*
- **Threatening illiquidity** – *Likelihood of inability of debtor to meet existing payment obligations on their maturity over a forecasting period of 24 months*

## Consequences

- Illiquidity or over-indebtedness → **Obligation** of the management to file for insolvency
- Threatening illiquidity → **Right** of the management to file for insolvency

## Types of insolvency proceedings

"Regular" insolvency proceedings  
Self administration proceedings  
Insolvency plan proceedings  
Out of Insolvency stabilisation and restructuring

# Operating models

Various hotel operating models in Germany, e.g.:

Owner/Operator

Owner ——— Tenant/Operator

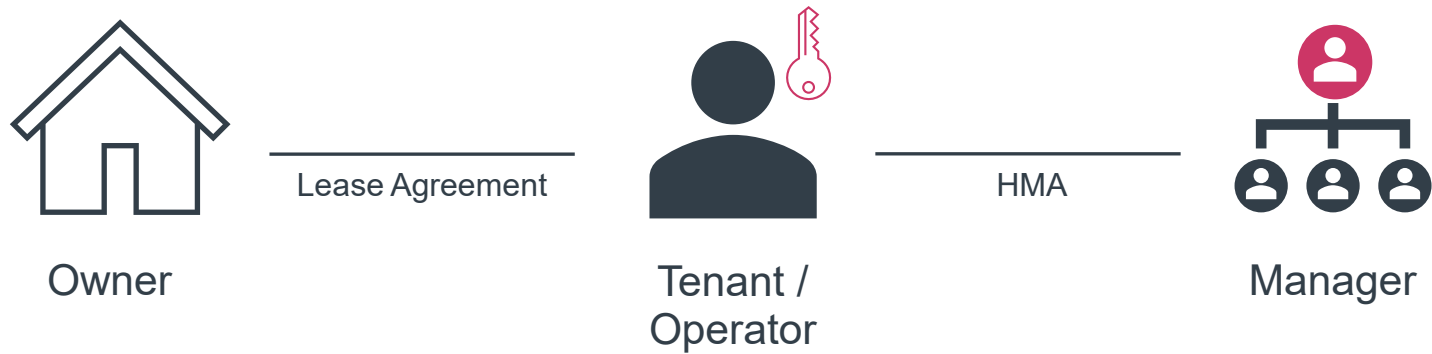
Owner ——— Manager

Owner ——— Tenant/Operator ——— Manager

Owner ——— Tenant /Operator ——— Franchisor

Lender ——— Owner ——— Tenant/Operator ——— Manager

# Lease Agreement and HMA



# Insolvency: impact on contractual relationships

## General principle:

- Agreements entered into by the insolvent company remain effective in the insolvency
- Option right of the insolvency administrator to fulfil or to not fulfil pending agreements

## Special provisions

- **Lease agreements** over real properties (as well as loan agreements) remain effective for the insolvency estate
- In **tenant insolvency**:
  - Special termination right for the insolvency administrator with 3 months' notice period
  - Withdrawal right for both the landlord and/or administrator if lease object was not handed over yet
  - Limitation of landlord termination right: prohibition of landlord termination after filing for insolvency due to payment default occurred **prior** to the filing for insolvency. Termination right remains for defaults occurring **after** the filing
- In **landlord insolvency**:
  - In case of sale of the real property by the insolvency administrator, special termination right of the acquirer of the property
  - Protection of the tenant possible through "tenant easement", which may require cooperation of prior ranking right holders (bank)

## Exception to the general principle

- **Management agreements** (*Geschäftsbesorgungsverträge*) **expire** automatically by operation of law upon opening of insolvency proceedings
- Depending on their specific terms and conditions, **HMA**s are typically regarded as management agreement in the meaning of these statutory provision
- Manager may be obliged to continue the management for interim period in case in case immediate ending would cause disproportionate damage

→ In case of operator insolvencies, the continuation of the hotel business operation is threatened by potential termination or expiries of lease agreements and/or HMA's by decision of the insolvency administrator or operation of law

→ In complex operational structures with multiple contractual relationships with different stakeholders, no party controls solely the entire process and all agreements supporting the business operation

→ Restructuring or investor process requires the close cooperation of all stakeholders, in particular in complex (international) operating constellations

→ Recent hotel group insolvencies mostly show coordinated transfer of lease agreements and/or HMA's or replacement of existing contracts rather than unilateral terminations.

# Impact on contract structures?

## Classic risk allocation profiles

- **Lease agreement** with fixed rent: **tenant** bears risk of operational success
- **HMA** with performance-related remuneration: **employer** (i.e. owner or operator) bears risk of operational success

## Developments

- Multiple risk profile increasing factors : Covid-19, geopolitical conflicts, inflation
- Recent case law recognising need for adjustment of risk allocation in some cases (Covid-19 restrictions)

## *Impact on contracts? Different directions, individual on case-by-case basis:*

- Increased rent security requirements from LL (12-24 months rent security, parent company guarantees, letter of comforts)
- Hybrid contractual solutions in lease agreements for risk sharing schemes, including,:
  - turn-over rent
  - detailed reporting duties
  - detailed pandemic clauses
  - Protective clauses for the benefit of lenders (Non-Disturbance Agreements, step-in rights, direct agreements) are essential

# FF&E (Furniture, Fixtures & Equipment)

## Ownership to FF&E

- Clear allocation of the ownership to the FF&E required
- Multiple parties may claim rights in relation to the FF&E:
  - Ownership, mostly either owner or operator
  - Potential conflicting/competing rights:
    - Retention of title by supplier
    - Statutory landlord pledge right
    - Security interest of lender (security transfers, part of land charge extent)
- Early documentation of ownership to FF&E recommended
- Ranking of the various rights of third parties may be required: "*first come, first served*"

FF&E Category	Owner	Insolvency Relevance
Procured by the property owner	Hotel property owner	Part of insolvency estate? → No (third-party property)
Procured by operator	Operator	Part of operator's insolvency estate
Financed FF&E (leasing / credit)	lender	Right of separation (§ 47 InsO)
FF&E subject to retention of title	Supplier	Right of separation (§ 47 InsO)
FF&E from FF&E reserve	Owner / operator	Depends on reserve structure

# FF&E – Reserve

- HMA or lease agreements generally provide for creation of an FF&E reserve:
  - Purpose: Financing of ongoing refurbishments and maintenance of FF&E
  - Build-up: Typically 3–5% of annual revenue
  - Custodianship: **separate account**, held in the name of or pledged for the benefit of the owner

## Core issues

- Commingled accounts (pooling) → difficulties in establishing separation rights
- Bank typically holds priority security interest over accounts
- Insolvency administrator's access to operating accounts
- Risk: operator draws on reserves immediately prior to insolvency → potential contestability / claw back rights
- Multiple parties are competing for the same funds.

## Resolution

- FF&E reserve accounts structured contractually as trust accounts, with a separate bank account and a clear access mechanism and rules governing when and how the reserve may be accessed.



Elie Kaufman, LL.M.

Senior Counsel

elie.kaufman@twobirds.com

+49 (0) 69 74 222 6238

# Thank you

twobirds.com

Abu Dhabi • Amsterdam • Beijing • Bratislava • Brussels • Budapest • Casablanca • Copenhagen • Dubai • Dublin • Dusseldorf  
• Frankfurt • The Hague • Hamburg • Helsinki • Hong Kong • Lisbon • London • Lyon • Madrid • Milan • Munich • Paris  
• Prague • Riyadh • Rome • San Francisco • Shanghai • Shenzhen • Singapore • Stockholm • Sydney • Tokyo • Warsaw

The information given in this document concerning technical legal or professional subject matter is for guidance only and does not constitute legal or professional advice. Always consult a suitably qualified lawyer on any specific legal problem or matter. Bird & Bird assumes no responsibility for such information contained in this document and disclaims all liability in respect of such information.

This document is confidential. Bird & Bird is, unless otherwise stated, the owner of copyright of this document and its contents. No part of this document may be published, distributed, extracted, re-utilised, or reproduced in any material form.

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses.

Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority (SRA) with SRA ID497264. Its registered office and principal place of business is at 12 New Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.



## Webinar: Hotel Insolvencies in Germany: Distress or Opportunity?

---

*A Capital Markets Perspective*

*Date: 17<sup>th</sup> June 2026*

# Financing Stressed Hotels: Perspectives from the Debt Markets

---

## Key message

1. Most stressed hotel situations are resolved before formal insolvency
2. The critical question is whether there remains a credible path to lender recovery
3. A financing perspective on stress, restructuring and recovery

# Why Are Hotels Coming Under Pressure?

---

## **Common drivers**

- Higher interest costs
- Labour cost inflation
- Rising operating expenses
- Deferred capex following Covid
- Slower than expected recovery in some markets
- Capital structures established in a lower interest rate environment

## **Recent German examples highlight different causes of stress**

1. Cost inflation and higher interest rates
2. Expansion and integration challenges
3. Operational and organisational complexity

# How Lenders Assess Stressed Situations

---

- **Asset**
- **Business Plan**
- **Sponsor**

## **Key question**

- **Can we see a path to being repaid?**

# Characteristics of Successful Restructurings

---

## **Common characteristics**

- Early engagement with lenders
- Transparent communication
- Realistic business planning
- Willingness to consider recapitalisation
- Focus on preserving operational performance

## **Common causes of value erosion**

- Delayed communication
- Overly optimistic assumptions
- Liquidity pressures
- Deferred decision making

# What Does Stress Look Like Inside a Hotel?

---

## **Operational impacts**

- Pressure on labour costs
- Deferred FF&E and capex
- Pressure on working capital
- Increased pressure on operational teams

## **Commercial implications**

- Reduced flexibility
- Greater focus on cash generation
- Increased importance of operational execution

# Distress or Opportunity?

---

## **Capital remains available for**

- Strong locations
- Quality assets
- Experienced sponsors
- Sensible leverage

## **Final thoughts**

**Most lenders do not want to own hotels**

**Where there is a credible path to recovery, consensual solutions are usually preferred**

# Thank you

---

Tim Barbrook  
Head of Debt Advisory

[tbarbrook@hvshwe.com](mailto:tbarbrook@hvshwe.com)

